

5

**REMARKS****Paragraphs 1 and 2 of the Office Action**

Claims 1 and 5-13 are rejected under 35 USC §102(b) as being anticipated by Lee.

10 Applicant's device includes panels that are removably attached directly to the clothing items by fasteners which are evenly dispersed on the clothing items. This allows a person to substantially cover their body, if need be, in leaf resembling panels. Alternatively, they may position less leaves on their clothes if local hunting laws require a certain amount of bright colored clothing to be exposed.

15 Lee includes a strip which may be attached to clothing via snaps which are not evenly dispersed. Artificial leaves are attachable to the strip. The strip may be selectively wrapped around and attached to the body. The strip is a major disadvantage with respect to applicant's device. Aside from the difficulty encountered with substantially covering a body with the artificial leaves, should such a user of Lee's device  
20 desire to do just that, the strip would make the clothing uncomfortable to wear and would encumber the movement of the person using the strip. In particular, the Lee device is designed for hunters, who presumably would be carrying a firearm, and therefore there would be great danger in having the arms and legs bound up with the strip. The Examiner contends that the artificial leaves could be attached to the clothing and points to  
25 column 3, lines 30-36. However, that is not what those lines indicate. Those lines are talking about additional articles of clothing having snaps or fasteners "to permit the *strip material 24 to be attached and snap fitted thereto* or to cling thereto as with Velcro fasteners." Column 3, lines 30-36, emphasis added. The Examiner also states that the leaves are shown attached to the clothing in the Figures, however the Figures only show  
30 the leaves attached to the strip.

There is simply nothing taught in Lee which indicates it would advantageous to couple the leaves to the clothing itself. To circumvent this discrepancy, the Examiner states that there is nothing precluding such an action. Applicant's advancement, while perhaps not grandiose, is an improvement nonetheless and is an improvement that was  
35 neither recognized by Lee nor by any since the issuance of Lee in 1988. The law is clear

- 5 that small changes or improvements by inventions in crowded arts are more likely, not less likely, to be patentable than in pioneering areas.

Progress in the crowded arts, usually made in small increments, is as important as it is in arts at the pioneer stage.

- 10 In re Meng and Driessen, 181 USPQ 94 (CCPA 1974). The attaching of the leaves directly to the clothing is an improvement over the Lee device as it makes the device easier, more comfortable, and safer to use.

For the above reasons, the application respectfully requests withdrawal of the rejection.

15

**Paragraphs 3 of the Office Action**

Claims 2-4 and 14 are rejected under 35 USC §102(b) as being unpatentable over Lee in view of Sesselman.

- 20 The Examiner has included Sesselman to find head and face coverings. However, as the Examiner admits, Sesselman is already a camouflaged article of clothing and therefore there would be no reason to combine the camouflaging ability of Lee with Sesselman. There would be great disadvantages of combining Sesselman to Lee as that would require the positioning of the strip around the head, neck and gloves. A hunter so encumbered would have difficulty moving, would not be able to fire a gun properly and
- 25 would be in danger of harming themselves by being entangled in brush or tree limbs. Additionally, how would one even begin to wrap the strip around their gloves and how would a face mask be removable once it is surrounded by and attached to the strip? That the combination has been suggested at all is evidence of improper hindsight reconstruction.

- 30 [T]he Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that
- 35 '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.' [citations omitted]

In re Fritch, 972 F.2d 1260; 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), (in part quoting from In re Fine, 837 F.2d 1071, 1075; 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)). For the

5 reasons stated above, it is evident that the combination would be detrimental, not advantageous, and thus no such combination could be found to be obvious.

For these reasons, it is believed that claims 1-14 are in condition for allowance.

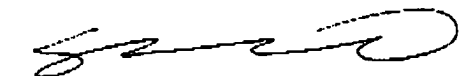
5

**CONCLUSION**

10 In light of the forgoing amendments and remarks, early consideration and  
allowance of this application are most courteously solicited.

Respectfully submitted,

15



Sean A. Kaufhold (Reg. No. 46,820)

P.O. Box 131447

Carlsbad, CA 92013

20 (760) 470-3368 FAX (760) 736-8449

Date: 12/10/04